



Final Regulation Agency Background Document

Agency name	Alcoholic Beverage Control Board
Virginia Administrative Code (VAC) citation	3 VAC 5-30
Regulation title	Tied-House
Action title	Tied-House Revisions
Document preparation date	12/02/2004

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

This action implements several recommendations arising out of the periodic review process. The tied-house regulations place limitations on gifts or free services which may be provided by alcoholic beverage wholesalers and manufacturers to retailers of their products, in order to maintain the "reasonable separation" of retailer interests from those of manufacturers and wholesalers required by Sections 4.1-111 and 4.1-216 of the Code of Virginia. The proposed amendments to the current regulations will lessen some of the restrictions on manufacturers' and wholesalers' merchandising and promotional activities aimed at their retail customers.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On October 23, 2004, the Alcoholic Beverage Control Board adopted a final regulation amending chapter 3 VAC 5-30, entitled "Tied-House."

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Section 4.1-111, subsection B. 3., mandates that the Alcoholic Beverage Control Board promulgate regulations which: "Maintain the reasonable separation of retailer interests from those of the manufacturers, bottlers, brokers, importers and wholesalers in accordance with § 4.1-216 and in consideration of the established trade customs, quantity and value of the articles or services involved; prevent undue competitive domination of any person by any other person engaged in the manufacture, distribution and sale at retail or wholesale of alcoholic beverages in the Commonwealth; and promote reasonable accommodation of arm's length business transactions." This chapter seeks to carry out this mandate by limiting the things of value which may be provided by manufacturers and wholesalers of alcoholic beverages to retailers.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The goal of this regulation is to promote the public health, safety, and welfare by maintaining the reasonable separation of retailer interests from those of the manufacturers, bottlers, brokers, importers and wholesalers. The Board has determined that the regulation is essential to comply with the mandate of Section 4.1-111 and to protect the health, safety and welfare of the citizens by reducing the pressure on retailers to promote excessive consumption of alcoholic beverages which can be caused by the undue influence of manufacturers and wholesalers. The proposal is intended to liberalize the restrictions slightly to recognize the increases in costs of service items and business entertainment since the regulation was last modified, and to remove the restriction on Sunday merchandising, recognizing that most retail businesses now operate seven days a week.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

In 3 VAC 5-30-10, the restriction on Sunday merchandising activities will be eliminated, except in jurisdictions where local ordinances restrict Sunday sales of alcoholic beverages, and in subsection B.3.g., exchanges of wine or beer for quality control purposes will not require replacement with identical packages;

In 3 VAC 5-30-30, subsection C.2., sales of nonalcoholic merchandise and alcoholic beverages will be allowed to appear on a single invoice, as long as the alcoholic beverage items are separately identified and totalled;

In 3 VAC 5-30-60, subsection D, the maximum wholesale value of can or bottle openers given by a manufacturer, bottler, or wholesaler to a retailer, upon which advertising matter regarding alcoholic beverages appears, will be increased from \$5 to \$10, and in subsection H, the limits on the number of wine or beer brands which may appear on a table tent will be removed; and

In 3 VAC 5-30-70, subsection C.4. will be repealed, removing the restriction on wholesalers or manufacturers providing business entertainment involving an overnight stay; and in subsection C.5., the \$200 per day per person limit on the value of business entertainment provided by wholesalers or manufacturers to employees of retail licensees will be raised to \$400.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If there are no disadvantages to the public or the Commonwealth, please indicate.

The primary advantages of the proposed action are to alcoholic beverage manufacturers, wholesalers, and retailers. Manufacturers and wholesalers will be given limited additional opportunities for efforts to promote their products to retail establishments. Retailers will be able to receive merchandising assistance from manufacturers' and wholesalers' representatives on Sunday, and will be allowed to accept more valuable service items and business entertainment from manufacturers and wholesalers. There are no disadvantages to the public or the Commonwealth.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar's office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change
3 VAC 5-30-40	Section proposed for repeal	Section will be retained in its present form	Kegs and tapping equipment are expensive items. Allowing wholesalers to deliver these to retailers without requiring deposit for return would in essence permit wholesalers to make large gifts to retailers. Wholesale

			deposits on returnable bottles help fight litter problems and promote recycling.
--	--	--	--

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency response
Jimmy Rogers, Jr., Virginia Wine Wholesalers Association	Opposed to Sunday merchandising; will require additional expense for wholesalers, ABC; there is no consumer demand for the practice	Regulation change does not mandate Sunday merchandising, merely allows it. Board could not justify restriction from a public policy basis, and the Office of the Attorney General indicated it probably would not pass constitutional muster.
Jimmy Rogers, Sr., Associated Distributors	Opposed to Sunday merchandising; don't need to do it on Sunday; 200 employees don't want it; most competitors don't want it	Same as above
Walter Marston, Virginia Beer Wholesalers Association	Support Sunday merchandising for beer; don't care if restriction is kept for wine; Sunday is a big beer sales day; support invoice, exchange provisions; oppose repeal of deposit requirements	Final regulation allows Sunday merchandising, and contains the proposed invoice and exchange provisions. Repeal of deposit requirements has been withdrawn.
Thomas A. Lisk. Virginia Hospitality and Travel Association, Virginia Retail Merchants Association	Support proposed changes; Sunday 2 nd largest retail shopping day; wholesalers can and do deliver to non-profit special events on Sunday; deposit law outdated, even without requirement, wholesaler free to charge deposit or increase price	Final regulation allows Sunday merchandising. Repeal of deposit requirements has been withdrawn. Kegs and tapping equipment are expensive items. Allowing wholesalers to deliver these to retailers without requiring deposit for return would in essence permit wholesalers to make large gifts to retailers. Wholesale deposits on returnable bottles help fight litter problems and promote recycling.

Enter any other statement here

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
5-30-10		Wholesalers may not perform merchandising activities on Sunday. Exchanges for quality control purposes must be of identical packages.	Sunday restriction removed, except where Sunday sales not allowed. Most retailers operate on Sunday, and there was no policy basis which could be identified for the restriction. Exchanges of wine or beer for quality control purposes will not require replacement with identical packages. As long as exchanges involve identical brand and quantity, identical packages need not be required.
5-30-30		If sales of nonalcoholic merchandise are made at the same time as alcoholic beverages, separate invoices must be created.	Sales of nonalcoholic merchandise and alcoholic beverages may be recorded on a single invoice, as long as the items are separately identified and totaled.
5-30-60		Manufacturer, bottler, or wholesaler may give can or bottle openers of no more than \$5 value to retailers. Table tents given by manufacturer or wholesaler to retailer may list no more than 4 wines or 4 beers.	Maximum value of openers increased to \$10. Costs have gone up, and small increase does not endanger tier separation. Since table tents may already be supplied, there is no policy reason to limit the number of products listed.
5-30-70		No business entertainment involving overnight stay may be provided by manufacturers and wholesalers to retailers. Per day limit of \$200 per employee on wholesalers' and manufacturers' business entertainment of retailers' employees.	Limit on overnight stay repealed. Limit increased to \$400. Costs have increased, and per day limit is effective enough to allow removal of overnight stay limitation.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

The proposed regulatory action will have no impact on the institution of the family and family stability.